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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 889

ZIM ISRAEL NAVIGATION CO., LTD., as owner of Steamship *ISRAEL*,

Petitioner,

v.

UNITED STATES LINES COMPANY,

Respondent,

and Steamship *AMERICAN PRESS*.

(And Cross-Suit)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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OCTOBER TERM, 1964

No. .....

ZIM ISRAEL NAVIGATION CO., LTD., as owner of Steamship *Israel*,

Petitioner,

v.

UNITED STATES LINES COMPANY,

Respondent,

and Steamship *American Press*.

(And Cross-Suit)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petitioner, Zim Israel Navigation Co., Ltd., as owner of the SS. *Israel*, hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, in the above entitled actions, which affirmed, by a divided court, an interlocutory decree of the United States District Court, Southern District

of New York, adjudging that a collision on October 29, 1959 between SS. *Israel* and SS. *American Press* was due to mutual fault.

The opinion of the Court of Appeals is reported in 336 F. 2d 150. The opinion of the Trial Court is reported in 222 F. Supp. 947. The opinion of the Court of Appeals is appended. Attachment "A".

Jurisdiction.

The judgment of the Court of Appeals sought to be reviewed is dated and was entered August 19, 1964, and a petition for rehearing thereof, filed with leave of said Court, was denied on December 4, 1964.

Jurisdiction to review said judgment by certiorari is provided by 28 U. S. C. A. §§1254(1), 2101.

Questions Presented for Review.

1. In the interest of prevention of ship collisions and establishment of a guiding interpretation of the statutory Inland Navigation Rules governing the navigation of crossing vessels, should not the decision of this Court in *Postal S.S. Corp.* v. *El Isleo,* 308 U. S. 378 (1940), be firmly defined, which ruled that "[t]he so-called privileged vessel has no absolute right to maintain her course and speed regardless of the danger involved in that action" (p. 387).

2. Should not the mandate on a privileged vessel to maintain speed under the statutory Inland Navigation Rules be lifted when she blows the danger signal signifying under Pilot Rule 80.7(b) that she sees danger developing in a crossing situation?

Statutes and Rules Involved.

The pertinent statutory Inland Navigation Rules and the Pilot Rules involved are as follows:

Two Steam Vessels Crossing.

ART. 19. "When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other." 33 U. S. C. A. §204.

Course and Speed.

ART. 21. "Where, by any of these rules, one of the two vessels is to keep out of the way, the other shall keep her course and speed." 33 U. S. C. A. §206.

Crossing Ahead.

ART. 22. "Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other." 33 U. S. C. A. §207.

Steam Vessel Shall Slacken Speed or Stop.

ART. 23. "Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse." 33 U. S. C. A. §208.

General Prudential Rule.

ART. 27. "In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger." 33 U. S. C. A. §212.

"§80.03 *Signals.* 33 C. F. R. 80.03.

* * * * * *

"(3) One short blast of the whistle signifies intention to direct course to own starboard, except when

two steam vessels are approaching each other at right angles or obliquely, when it signifies intention of steam vessel, which is to starboard of the other to hold course and speed."

"§80.2 Cross Signals.

Steam vessels are forbidden to use what has become technically known among pilots as 'cross signals,' that is, answering one whistle with two, and answering two whistles with one." 33 C. F. R. 80.2.

"§80.7. *Vessels approaching each other at right angles or obliquely.* (a) When two steam vessels are approaching each other at right angles or obliquely so as to involve risk of collision, other than when one steam vessel is overtaking another, the steam vessel which has the other on her own port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse."

"(b) If from any causes the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped and backed if necessary, until signals for passing with safety are made and understood." 33 C. F. R. 80.7 (a) and (b).

Statement of the Case.

On a clear night on the date stated the United States Lines freighter *American Press* was proceeding northward in New York harbor in the Main Channel which lies immediately westward of Governors Island.

The passenger vessel *Israel* was proceeding westward in the channel range north of Governors Island to enter the Main Channel and turn to her left seaward to the south.

It is undisputed (and so found) that these respective vessels were on crossing courses; that the freighter was the burdened vessel obliged to keep out of the way, and the *Israel* was the privileged vessel. The privileged *Israel* was required under Article 21 of the Inland Rules (above quoted) to maintain her course and speed, subject to subdivision (b) of Pilot Rule 80.7 (above quoted).

It is also undisputed that each vessel was displaying regulation lights. *Israel's* passenger accommodations were lighted and this white-hulled vessel had her stack flood-lit. She was taken to be a Zim outbound sea-going passenger vessel.

The freighter collided bow on with the exposed port side of the *Israel* just aft of the *Israel's* bridge, in the Main Channel northwest of Governors Island.

The Trial Court ruled that the freighter negligently collided with the *Israel* because the freighter neglected to keep out of the way as the burdened vessel, neglected to alter course to starboard in accordance with Pilot Rule 80.7(a), neglected timely or adequately to slacken her speed, and was deficient in lookout in failing to hear the *Israel's* whistle signals in excellent conditions of audibility.

The *Israel*, on her part, sighted the freighter on her port hand upbound in the channel, promptly sounded a signal one-blast and then repeated it on hearing no answering signal. The one-blast signal sounded by the *Israel* signified (Pilot Rule 80.03) that she intended to maintain course and speed to cross the freighter's bow.

The *Israel*, after seeing that the freighter was proceeding ahead without turning to starboard (as found by both Courts below) and then hearing no response to her signals,

sounded the danger signal and then put her engines full speed astern.

The *Israel* reversed her engines, as stated, only one minute (0823½) before the time (0824½) "the vessels were in dangerously close quarters" and "* * * the situation considering the size of the vessels was perilous." (Trial Court Opinion, Zim Israel Appendix, p. 28a, first paragraph).

Nevertheless, the Trial Court assessed fault against the *Israel* for changing speed as she did, considering that there was not such immediate danger as to warrant departure from the *Israel's* duty to maintain speed (Opinion, Zim Israel Appendix, pp. 17-19).

Still, the Trial Court should be regarded as having found *Israel* at fault for only a technical statutory violation which was not contributory because the Trial Court went on to say:

> "It is evident that *had* the *American Press* turned to starboard at the time she gave the signal, or shortly thereafter, *the collision would have been avoided, despite the Israel's change of speed.*" (Opinion, Appendix, p. 29a.) (Italics supplied.)

The Court of Appeals in its majority opinion did not modify the Trial Judge's findings, but nevertheless affirmed the finding of contributory fault on the part of the *Israel.*

But Judge Moore, dissenting, stated:

> "I cannot reconcile the decision of the Supreme Court in *El Isleo* and the law as stated, with the conclusion of the court below. To me the *American Press* upon the conceded facts and the applicable law was solely at fault. Hence, I would reverse."

The affirmance imports that a privileged vessel's navigation is slavishly bound to the maintenance of speed and

does not have the latitude sponsored by the letter and spirit of this Court's *El Isleo* decision. Cited, *supra,* Question 1, Page 2.

The decision of affirmance plainly requires of a big ship navigator a choice between "danger" and "imminent danger" too refined to be workable and meet this Court's admonition to avoid danger.

The *El Isleo* decision was also considered by the Court of Appeals in the Fourth Circuit in *United States* v. *SS. Soya Atlantic,* 330 F. 2d 732. That Court ruled that a privileged vessel must hold on until "the danger of collision is obvious and imminent" (pp. 738-9) and considered that this Court's *El Isleo* decision permitted a privileged vessel to reduce speed only where it was apparent that the burdened vessel (by signaling that she intended to cross the privileged vessel's bow) expressed an intent not to take avoiding action. While it is correct that that was the situation considered in the *El Isleo* decision, it is submitted that the basic principle of that decision is that a privileged vessel is licensed to depart from maintaining speed in a situation likely to be dangerous (*El Isleo* decision, *supra,* at p. 387) and when she blows the danger signal pursuant to 33 C. F. R. 80.7(b) *supra,* p. 4.

Reasons for Allowance of Writ.

It is important to lower Federal Courts sitting in admiralty, and to Government agencies concerned with the investigation of vessel collisions in crossing situations and with the licensing and disciplining of ships' officers, that the application of Pilot Rule 80.7(a) and (b), in conjunction with the statutory Inland Crossing Rules, be authoritatively settled, and that the governing principle espoused by this Court in the cited *El Isleo* decision be re-defined.

The decision sought to be reviewed binds a privileged vessel in a crossing situation to a blind obedience to the maintenance of speed despite likely danger between the vessels threatening the crossing; and it should be corrected in the general interest of prevention of ship collisions.

Respectfully submitted,

DAVID C. WOOD,
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HILL, BETTS, YAMAOKA, FREEHILL & LONGCOPE,
of Counsel.

Dated: February 5, 1965.
New York, N. Y.

Attachment A.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

September Term, 1963

(Argued June 1, 1964 Decided August 19, 1964.)

Docket No. 28528 Cal. 464

ZIM ISRAEL NAVIGATION CO. LTD., as Owner of Steamship *Israel*,

Libelant-Appellant,

v.

UNITED STATES LINES COMPANY,

Respondent-Claimant-Appellee,

and Steamship *American Press*.

Docket No. 28529 Cal. 465

UNITED STATES LINES COMPANY as Owner of Steamship *American Press*,

Libelant-Appellant,

v.

ZIM ISRAEL NAVIGATION COMPANY,

Respondent-Claimant-Appellee,

and Steamship *Israel*.

Before:

MOORE, KAUFMAN and MARSHALL,

Circuit Judges.

Appeals from a decree of the United States District Court for the Southern District of New York, Weinfeld, J., finding the SS. *Israel* and the SS. *American Press* both to

blame for a collision between the two vessels on October 29, 1959.

Affirmed on the opinion below, 222 F. Supp. 947 (S. D. N. Y. 1963).

EUGENE F. GILLIGAN, of HILL, BETTS, YAMAOKA, FREEHILL & LONGCOPE, New York, N. Y., for Zim Israel Navigation Co., Ltd.

JOHN F. GERITY, of KIRLIN, CAMPBELL & KEATING, New York, N. Y. (Richard H. Brown, Jr. and Arthur J. Blank, of counsel), for United States Lines Company.

PER CURIAM:

In these consolidated actions, the owners of the SS. *Israel* and the SS. *American Press* each contend that the other's vessel was solely responsible for a collision between the two ships which occurred in New York Harbor on a clear and calm October evening in 1959. In a comprehensive and painstaking opinion below, Judge Weinfeld concluded that both vessels were at fault. We believe that his findings of fact were not clearly erroneous and that his conclusions of law were correct. We affirm on his opinion, reported at 222 F. Supp. 947 (S. D. N. Y. 1963).

As Judge Weinfeld noted and as both parties concede, the *Israel* was the "privileged" vessel, and accordingly had the duty of maintaining her course and speed; the *American Press* was the "burdened" vessel, and was charged with the obligation of averting the *Israel's* path. On appeal, neither party seriously questions Judge Weinfeld's findings that both vessels failed to comply with their obligations. Each contends, however, that the other's derelictions were the true cause of the accident, that its own faults contributed to the collision in no respect, and that any deviations from the path of duty were necessitated by the wrongdoing of the other.

Identical contentions were rejected below, and on this record we would have no justification on appeal in reaching

a contrary conclusion as to these essentially factual questions so fully litigated in the court below. "In reviewing a judgment of a trial court, sitting without a jury in admiralty, the Court of Appeals may not set aside the judgment below unless it is clearly eroneous. No greater scope of review is exercised by the appellate tribunals in admiralty cases than they exercise under Rule 52(a) of the Federal Rules of Civil Procedure." *McAllister* v. *United States,* 348 U. S. 19, 20 (1954); *Alison* v. *United States,* 251 F. 2d 74, 76 (2d Cir. 1958). See also *Morales* v. *City of Galveston,* 370 U. S. 165, 168 (1962).

The judgment is affirmed.

MOORE, Circuit Judge (dissenting):

This was an utterly needless collision and should not have occurred. But occur it did and it remains only to assess fault. The trial court has made careful and well-considered findings on the basis of which in my opinion the conclusion must be drawn as a matter of law that the *American Press* was solely to blame for the collision. No repetition of the facts amply set forth in the trial court's lucid analysis is necessary. See..... F. Supp.....

The *Israel* was the privileged vessel: the *American Press* the burdened vessel. Pilot Rule 80.7(a) provides that the burdened vessel "shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel, or, if necessary to do so, slacken her speed or stop or reverse."

In my opinion, the conclusions of the trial court are inconsistent with the finding that both vessels were at fault. He found that "[t]he essential duty of the *American Press* as the burdened vessel was to keep out of the way of the *Israel"; that the American Press* failed to alter her course to starboard; that had she done so the collision would have been avoided despite the *Israel's* change of speed; that starboard action was not precluded by an alleged shoal

area; and that the *American Press* failed in her statutory duty to keep out of the way of the *Israel*.

Despite these findings, the trial court found that the *Israel* committed a breach of statutory duty in that she failed to maintain her course and speed. However, "[t]he so-called privileged vessel has no absolute right to maintain her course and speed regardless of the danger involved in that action." *Postal S.S. Corp.* v. *El Isleo*, 308 U. S. 378, 387 (1940). It was the failure of the *American Press* to go astern of the *Israel* which was the cause of the collision. Even assuming a departure by the *Israel* from a statutory duty to maintain speed and course, the reduction in speed was not a producing cause of the *American Press's* failure to veer to starboard.

I cannot reconcile the decision of the Supreme Court in *El Isleo* and the law as stated, with the conclusion of the court below. To me the *American Press* upon the conceded facts and the applicable law was solely at fault. Hence, I would reverse.

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(And Cross-Suit)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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March 3rd, 1965.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

JURISDICTION

The petition for certiorari herein should be denied for lack of jurisdiction, because it was not filed within ninety days after entry of the judgment sought to be reviewed, as required by 28 U. S. C. A. §2101(c), and the time was never extended as provided for in the same statute.

In stating the basis of this Court's jurisdiction, the petitioner has patently omitted an adequate description of the material sequence of events.

The judgment of the Court of Appeals was entered and filed in the office of the clerk on August 19, 1964. Under Court of Appeals Rule 25, any petition for rehearing was required to be filed within fifteen days from the filing of the opinion in the clerk's office, i.e. by September 3, 1964. Petitioner did not petition for rehearing within that time but, on November 23, 1964, moved for leave to file a petition for rehearing, said petition being annexed to the moving papers. That motion was filed some ninety-six days after entry of the Court of Appeals' judgment,—six days after the time to petition for certiorari had expired. On December 4, 1964, the Court of Appeals ruled:

> "Application for permission to file petition for rehearing granted—Petition for rehearing denied."

This petition for certiorari was filed February 8, 1965.

Petitioner's belated application to the Court of Appeals for leave to petition for rehearing should not operate to extend its time to apply to this Court for certiorari. See *Bowman* v. *Loperena*, 311 U. S. 262, 266 (1940) and *Federal Trade Commission* v. *Minneapolis-Honeywell Regulator Co.*, 344 U. S. 206, 211-212 (1952).

In any event, where the time within which to bring the matter before this Court has expired, petitioner should not be permitted to reinvest itself with that right simply by obtaining leave to file an untimely petition for rehearing, which was denied in the same order granting such leave. Such a procedure would, in effect, grant a power to a Court of Appeals to control the time for certiorari even though such time had expired. See *Conboy* v. *First National Bank*, 203 U. S. 141, 145 (1906) and *Credit Company Limited v. Arkansas Central R. Co.*, 128 U. S. 258, 261 (1888). Only

a justice of this Court can extend the time and then only on a showing of good cause. 28 U. S. C. A. §2101(c).

The Questions Presented for Review

The questions which petitioner seeks to present for review (Petition, p. 2) are not significantly related to the facts in this case, as found by the District Court and affirmed by the Court of Appeals.

Statutes and Regulations Involved

The statutes and regulations concerning the collision aspects of this matter are set forth in the Petition, pp. 3-4.

The statute and rule pertinent to the untimeliness of this Petition are:

28 U. S. C. A. §2101.

"Supreme Court; time for appeal or certiorari; docketing; stay

* * * * * *

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

* * * * * *

U. S. Court of Appeals 2d Circuit, Rule 25, 28 U. S. C. A.

"Rule 25. Petitions for Rehearing

"(a) Time; Form. Any petition for rehearing shall be filed with the clerk of the court within 15 days from the filing of the opinion in the clerk's office."

* * * * * *

Statement of the Case

In stating the case, the Petition omits several material findings of the District Court. Moreover, it contains one grave mis-statement,—i.e., contrary to the Petition (page 5), the District Court did not rule that the *American Press* was deficient in lookout.

Briefly, the sequence of material events, as found by the District Court and affirmed by the Court of Appeals, was as follows:—After sighting the *Israel* on a crossing course at about 8:21 p.m.*, the *American Press* reduced from full ahead maneuvering speed to slow ahead at 8:22 and sounded a one-blast whistle signal. At about the same time the *Israel* sounded and repeated a one-blast signal. Neither ship heard the other's signal. At 8:22½, with the vessels about one mile apart and the *American Press* already reducing speed, the *Israel*, contrary to her duty to keep her speed, stopped her engine. [The Petition omits mention of this first statutory violation, which was committed before the *Israel's* asserted first danger signal.] The *American Press* stopped her engine at 8:23. At 8:23½ the *Israel* went full astern. At 8:24 the *American Press* went half astern and, at the same time, the *Israel* again stopped her engine. At 8:24½ the *American Press* went full astern, followed by emergency full astern and the *Israel* did the same. At 8:25½ the *American Press* let go her port anchor. With the *Israel* slowing and being set by the ebbing tidal current toward the *American Press*, collision occurred one minute later,—at 8:26½ p. m.

The District Court held that the *Israel* breached her duty to keep her speed when, between 8:22½ and 8:24½,

* All times in this brief are *American Press* bridge time to which *Israel* times have been adjusted by adding one-half minute (District Court Opinion, U. S. Lines Appendix pp. 58a-59a).

she stopped her engine, reversed her engine, stopped her engine and again reversed her engine, on its finding that the time had not then come for her to change speed on any basis of immediate danger. Indeed, the District Court found that, up to the *Israel's* emergency full astern order at 8:24½, her own pilot believed the *Israel* could safely cross the *American Press's* bow. (Opinion, U. S. Lines Appendix, pp. 56a-58a.)

The *Israel's* faults were held contributory to collision. (Opinion, U. S. Lines Appendix, pp. 63a-64a.)

The District Court held that the *American Press* was also in contributory fault, in essence for not keeping out of the way of the *Israel,* despite the *Israel's* concurrent or subsequent acts of negligence on the reasoning that the *American Press* should have altered course to starboard or reduced speed more quickly, or both. (Opinion, U. S. Lines Appendix, pp. 58a-63a.)

The Court of Appeals affirmed, with one judge dissenting. (Attachment A of Petition, p. A-1.)

Argument

This cause concerns a simple collision, and the *Israel's* faults and liability were properly determined by the application of well settled principles of law to the facts found by the District Court. As such, it does not warrant review by this Court on certiorari.

It is self-evident that the *Israel* caused danger of collision and collision itself by her repeated violations of 33 U. S. C. A. §206 (Petition, p. 3) which required her to keep her course and speed. Thus, on the facts found by the District Court, *supra,* pages 4-5, four and one-half minutes before collision the *American Press,* in compliance with her duty, started to reduce speed by putting her engine

slow ahead; one-half minute later the *Israel* stopped her engine. Three and one-half minutes before collision the *American Press* stopped her engine; one-half minute later the *Israel* went full speed astern. Two and one-half minutes before collision the *American Press* went half speed astern and the *Israel* simultaneously, and inconsistently, stopped her engine. Two minutes before collision the *American Press* went full speed astern, and the *Israel* did the same. One minute before collision the *American Press* dropped her anchor. The *Israel* did not use an anchor.

It is plain that the speed reductions properly taken by the *American Press* to keep out of the *Israel's* way were improperly offset and finally neutralized altogether by the unpredictable and premature reductions in the *Israel's* speed, all in violation of her duty to keep her speed. That such was the case is emphasized by the fact that, despite the *Israel's* repeated speed reductions, about one-half of her length crossed the *American Press's* bow before collision; if she had kept her speed, she obviously would have crossed safely ahead. The courts below correctly held the *Israel* in fault and liability for her repeated breaches of duty. To condone actions such as the *Israel's* would force a giving-way vessel to speculate on the other's navigation, in which case the rules for prevention of collision might as well be discarded, as navigation would be reduced to a game of bluff. See *Helenic Lines* v. *The Exmouth*, 253 F. 2d 473, 476 (2d Cir. 1958), cert. den. 356 U. S. 967. This Court has often emphasized the necessity for requiring the holding-on vessel to keep course and speed, a principle squarely applicable to condemn the *Israel's* navigation. See *Wilson* v. *Pacific Mail S. S. Co.*, 276 U. S. 454, 461-463 (1928); *The Delaware*, 161 U. S. 459, 469 (1896); *Hutchinson* v. *The Northfield*, 154 U. S. 629, 630 (1878); *The Britannia*, 153 U. S. 130, 142-143 (1894); *The Corsica*, 76 U. S. 630, 633-634 (1869).

The facts and law in *Postal Steamship Corporation* v. *SS. El Isleo,* 308 U. S. 378 (1940) are clearly distinguishable from those in the cause at bar. The controlling difference is that in *El Isleo* the giving-way vessel sounded a two-blast signal, in effect indicating an unlawful intent to cross the holding-on vessel's bow. The holding-on vessel answered with an alarm and one blast, thus sounding a cross signal (i.e. answering two blasts with one), and then maintained speed until collision was imminent. In the context of that situation this Court merely held (page 387) that Inspectors' Rules II and VII [now respectively 33 C. F. R. §§80.2 and 80.7,—Petition, p. 4] were not essentially inconsistent with 33 U. S. C. A. §206, and were valid. The case was remitted for final decision to the Court of Appeals, which held, in *Postal Steamship Corporation* v. *Southern Pacific Company,* 112 F. 2d 297 (2d Cir., 1940), at page 298:

> "There can be no doubt that the Supreme Court meant to hold that in a crossing case, *when the holding-on vessel gets two blasts from the giving-way vessel, which are unacceptable to her,* she must neither cross the signal, nor keep her speed, but must at least stop her engines, and if necessary back, 'until signals for passing with safety are made and understood'. (Rule VII)." (Emphasis supplied.)

However, in the cause at bar, the *American Press* never sounded a two-blast signal or any other unlawful signal and commenced reducing speed four and one-half minutes before the eventual collision, when the ships were a mile or more apart. Therefore, the condition of an unacceptable two-blast signal, which would permit and indeed require the holding-on vessel to stop and back under 33 C. F. R. §80.7, did not exist, and *Israel's* speed changes, in violation of the basic statute (33 U. S. C. A. §206), cannot be justified under 33 C. F. R. §80.7 or *El Isleo.*

In summary, to assure certainty of navigation and thereby diminish risk of collision, under the authoritative decisions of this Court, the *Israel* was required to keep her speed until departure from that duty was necessary to avoid immediate danger absent a definite indication that the *American Press* did not intend to comply with her own duty. On the facts, both courts below properly concluded that the *Israel's* departure from her duty was not justified. To have held otherwise would virtually abrogate the statutory crossing rules and the decisions of this Court, *supra*, page 6.

Finally, review of the questions posed by petitioner would serve no important purpose for future guidance of the courts and government agencies as petitioner contends. The United States Coast Guard is now preparing proposals for legislation which would substantially revise the statutory Inland Rules to make them consonant with new International Rules, which will become effective on September 1, 1965, entailing probable elimination of the pilot rules (33 C. F. R. §§80.2 and 80.7) material to this cause. See ***Proposal to Establish a Uniform Set of Rules of the Road Based upon the 1960 International Rules***—issued by U. S. Coast Guard in 1964.

Conclusion

Wherefore, respondent prays that this petition for a writ of certiorari be denied.

Respectfully submitted,

John F. Gerity
Counsel for Respondent
United States Lines Company

Dated: March 3rd, 1965

Office-Supreme Court, U.S.
FILED
MAR 11 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 889.

ZIM ISRAEL NAVIGATION CO., LTD.,
as Owner of Steamship *ISRAEL*,
Petitioner,

v.

UNITED STATES LINES COMPANY.
Respondent,

and

Steamship *AMERICAN PRESS*.
[and Cross-Suit.]

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF IN BEHALF OF PETITIONER.

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of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 889.

ZIM ISRAEL NAVIGATION CO., LTD., as owner of Steamship *Israel*,

Petitioner,

v.

UNITED STATES LINES COMPANY,

Respondent.

and

Steamship *American Press.*

[And Cross-Suit]

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF IN BEHALF OF PETITIONER.

This brief is filed to rectify erroneous statements and to expose unsound arguments contained in respondent's opposing brief.

(1) Respondent seeks to dispel the public importance of the law question presented by the petition by resort to unsupported assumptions.

It thus contends (P. 8) that Pilot Rule 7 (33 C. F. R. §80.7 (a) and (b)), significantly here involved and approved by this Court, *may* not have future importance *if* Congress

legislates new U. S. Coast Guard proposals for amendment of the Statutory Inland Rules "entailing probable elimination" of the Pilot Rules. It cannot be said when and if Congress will act and whether or not the Coast Guard intends to propose any changes in the Pilot Rules.

(2) Respondent unsupportably argues against the jurisdiction of this Court to grant the petition. Petitioner filed its petition herein sixty-six days after its petition to the Court of Appeals for rehearing was denied. Respondent presumes to say that petitioner's rehearing petition which the Court of Appeals accorded timeliness should be regarded as untimely.

(3) Respondent wrongly seeks to infer that this matter involves complex details of collision facts. Respondent's Brief, pp. 4-7. Both lower Courts resolved the material facts in their ultimate concept. The important law issue alone, of which petitioner seeks review, remains.

One example (of irrelevant fact) which we challenge is respondent's unlicensed claim that the petition contains the "grave mis-statement" (Respondent's Brief, p. 4) that the Trial Court did not rule that the AMERICAN PRESS was deficient in lookout.

The undisturbed ruling in the Trial Court is that: "The Court finds that each vessel gave the one-blast signal as testified to by its pilot; also, that these were not heard by the other vessel, although it is difficult to understand that failure since conditions for their reception were favorable and the whistles on the respective vessels were in good order and functioning."
(ZIM ISRAEL Appendix, pp. 23a-24a). Deficiency in hearing, as well as in seeing, spells deficient lookout.

Respondent's Brief presents no valid grounds of opposition and it is submitted that the petition herein should be granted.

Dated: March 8, 1965.

Respectfully submitted,

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